

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-398

FEBRUARY TERM, 2007

In re K.O., Juvenile

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APPEALED FROM:

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Chittenden Family Court

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DOCKET NO. 341-6-04 Cnjv

Trial Judge: Brian J. Grearson

In the above-entitled cause, the Clerk will enter:

Father appeals the termination of his parental rights with respect to his son, K.O. We affirm.

Mother and father were unmarried and not living together at the time of K.O.'s birth in June 1998. K.O. lived with his mother until the Department for Children and Families intervened. The Department first became involved with the family in July 2002 and filed a petition in June 2004 alleging that K.O. and his step-siblings were in need of care and supervision. In July 2004, K.O. and two of his step-siblings were placed with his

maternal grandmother. After mother acknowledged that the children were in need of care and supervision, a disposition hearing was held in December 2004. The disposition report adopted by the court called for a concurrent case plan of three-to-six months for reunification with mother or termination of parental rights in the event mother failed to show significant progress with the case plan. Father was unavailable because of his incarceration and was not considered as a placement option. The plan for services for father upon his release was prefaced by the requirement that he make himself available to be introduced to his son. The first step in the plan required father to meet with the Department to discuss an arrangement for such an introduction.

In May 2005, the case plan changed to adoption because of mother=s failure to comply with services. Father remained incarcerated and had not contacted the Department regarding a plan for introduction to K.O. In September 2005, the Department filed a petition to terminate mother and father=s parental rights. A hearing on the petition was held in July 2006, at which time mother relinquished her parental rights. Although still incarcerated, father participated in the termination hearing and sought a disposition that would enable him to see K.O. and get to know the child. Following the hearing, the family court granted the Department=s petition, concluding that there had been a substantial change of material circumstances and that termination of father=s parental rights was in K.O.=s best interests in light of the criteria set forth 33 V.S.A. ' 5540.

On appeal, father argues that the family court=s termination order cannot stand because the Department failed to present evidence on whether future father-child contact would be in K.O.=s best interests, and because the court failed to make findings on this issue, which was critical in determining what disposition option was most appropriate. We find no basis for overturning the family court=s order. When the family court is presented with a termination petition and finds changed circumstances, it is required by statute to weigh the best-interest-of-the-child factors contained in 33 V.S.A. ' 5540 to determine whether termination of parental rights is warranted. @ In re T.T., 2005 VT 30, & 5, 178 Vt. 496 (mem.). In this case, the family court examined each of the statutory factors, including the most significant oneCwhether father would be able to resume his parental duties within a reasonable period of timeCand determined that termination of parental rights was in K.O.=s best interest. In making this determination, the court found that (1) father had been incarcerated during much of K.O.=s life; (2) father had made little or no effort to contact his son, and had not played any meaningful role in his son=s life; (3) father had seen his eight-year-old son on only a few occasions years ago and did not know

him; (4) father=s minimum release date was June 2007 and his maximum release date was March 2016; (5) father=s behavior in prison had led to numerous disciplinary proceedings against him; (6) father had never exercised his parental duties before his incarceration and had made no effort to contact the Department regarding a plan for introduction to his son; and (7) K.O.=s physical, emotional, and educational growth had thrived since being placed with his maternal grandmother and step-siblings in July 2004.

As the court concluded, these findings demonstrate that father played no role in the child=s life and would be unable to resume parental duties within a reasonable period of time. Indeed, father essentially concedes these points. Because consideration of the statutory criteria amply support the Department=s termination petition, the family court acted well within its discretion in granting the petition. Nothing in our statutory law compelled the court to make findings regarding the potential for beneficial noncustodial contact between father and K.O. at some point in the future. See *id.* & 7 (A[O]nce the family court applies the criteria in ' 5540 and determines that the child=s best interests warrant giving the State custody of the child without limitation as to adoption, the court need not revisit the permanency hearing options contained in 33 V.S.A. ' 5531(d) and explain why it is choosing termination of parental rights over other options enumerated therein.@).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice